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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, CHAIRMAN

WILLIAM A. MUNDELL

MARC SPITZER

MIKE GLEASON

KRISTIN K. MAYES

Arizona Corporation Commission

DOCKETED

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AZ CORP COMMISSION
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IN THE MATTER OF THE COMPLAINT OF
MOHAVE ELECTRIC COOPERATIVE, INC.
AGAINST UNISOURCE ENERGY
CORPORATION.

DOCKET NO. E-04230A-04-0798
DOCKET NO. E-04204A-04-0798
DOCKET NO. E-01750A-04-0798

IN THE MATTER OF THE APPLICATION OF
UNS ELECTRIC, INC. FOR AN ORDER
APPROVING A TRANSFER OF A PORTION OF
A CERTIFICATE OF CONVENIENCE AND
NECESSITY.

DOCKET NO. E-04204A-04-0824
DOCKET NO. E-01750A-04-0824

APPLICATION FOR
PROTECTIVE ORDER

Mohave Electric Cooperative, Inc. ("Mohave"), by and through its attorneys undersigned, respectfully makes application for a protective order regarding confidential information. The Staff of the Arizona Corporation Commission ("Staff") has requested access to certain contracts, competitive price related documents, data, studies, and other materials, related to Mohave's operations, including, without limitation work plans and contracts and client specific information relating to Mohave's provision of service to Nucor-Kingman, LLC. Mohave alleges such documents and information contain data of a proprietary, confidential or legally protected nature ("Confidential Information").

In order to expedite the provision of information to Staff, Mohave seeks an

1 order protecting such information when released to Staff and any independent contracting
2 consultants retained by Staff for these dockets. In particular, Mohave requests that the
3 Administrative Law Judge enter an order requiring Staff and Mohave to execute an
4 Agreement in substantially the form attached hereto as Exhibit A to govern disclosure
5 between Staff and Mohave of documents and information deemed by Mohave to be
6 Confidential Information.

7 The appropriateness of a Confidentiality Agreement has been discussed
8 with Commission Staff. Commission Staff has indicated that it will not enter into a
9 Confidentiality Agreement in this matter unless ordered to do so by the Administrative
10 Law Judge.

11 Mohave asserts that client specific information is entitled to protection
12 against disclosure to persons beyond Commission Staff pursuant to A.R.S. § 40-
13 202(C)(5) which authorizes the Commission to adopt rules to:
14

15 "Provide that, notwithstanding any other law, customer
16 information, account information and related proprietary
17 information are confidential unless specifically waived by the
customer."

18 No current or previous customer of Mohave located within the portion of Mohave's
19 certificated area at issue in these proceedings have waived the confidential nature of their
20 data. Nucor has specifically orally requested that Mohave keep information related to its
21 account confidential.

22 Mohave further asserts that work plans should be treated as confidential
23 information. Such work plans outline, in detail, improvements the utility expect to make
24 over a period of years (usually five to ten years). Such work plans not only tend to reveal
25

1 the competitive strategy of the utility, but also potential strengths and weaknesses in the
2 utility's current facilities. If not protected from disclosure, this type of information can
3 be used by competitors, agitators, and even terrorists, to disrupt the delivery of reliable
4 energy or counter the proposed actions of the utility. Thus, disclosure of work plans
5 represent a possible risk to the public health and safety, as well as to the financial welfare
6 of Mohave.

7
8 The discovery requested by Staff in these dockets has already reached into
9 the confidential and sensitive areas of customer specific information, work plans and
10 contractual relationships with wholesale suppliers of power and transmission service.
11 Future discovery requests may reach into other areas of Confidential Information. Rather
12 than requiring each request to be scrutinized by the Administrative Law Judge, Mohave
13 requests that the Commission's common practice of utilizing a Confidentiality Agreement
14 be followed, whereby Mohave may freely make disclosures to Commission Staff, while
15 designating which documents or information it deems to contain Confidential
16 Information. This process in turn enables Staff ready access to the information, while
17 protecting Confidential Information from general disclosure.

18 DATED this 20th day of May, 2005.

20 CURTIS, GOODWIN, SULLIVAN,
21 UDALL & SCHWAB, P.L.C.

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23 *for* Michael A. Curtis
24 2712 North Seventh Street
25 Phoenix, Arizona 85006
26 Attorneys for Mohave Electric
Cooperative, Inc.

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1 Terrence G. O'Hara
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Mary Walker

CONFIDENTIALITY AGREEMENT

The parties to this Confidentiality Agreement (this "Agreement") are the Staff of the Arizona Corporation Commission ("Staff") and Mohave Electric Cooperative, Inc. ("Mohave"). This Agreement governs Mohave Electric Cooperative, Inc. v. UniSource Energy Corporation and UNS Electric, Inc., Docket Nos.: E-01750A-04-0798, E-04204A-04-0798, and E-04230A-04-0798; and UNS Electric, Inc.'s Application, Docket Nos.: E-01750A-04-0824 and E-0404A-04-0824.

Pursuant to the Protective Order issued _____, 2005 in the above-referenced matters, Staff and Mohave agree:

§1. Non-Disclosure. Except with the prior written consent of Mohave, or as provided for herein, no document designated as "Confidential Information" as provided below, nor the confidential information contained therein, shall be disclosed by Staff, except as necessary for Staff and any independent contracting consultants retained by Staff to evaluate the information in the context of the issues raised in the above referenced dockets. This prohibition shall extend to reports and documents that aggregate information gathered from Mohave, provided Mohave's individual disclosure is indiscernible from the aggregate report. Where Confidential Information provided by Mohave is confidential solely as a result of either disclosing individual customer information, or disclosing specific prices, Staff shall not be prohibited from the public disclosure of such information in an aggregated form, where no individual customer or specific individual price can be ascertained.

§2. Designation of Confidential Information. All documents, data, information, studies and all other written, printed, transcribed, audio-taped or video-taped materials furnished to Staff that Mohave claims to be a trade secret, or of a proprietary, confidential, or legally protected nature, including any and all data or pricing information relating to transactions and current and projected work plans shall be designated and referred to herein as "Confidential

Information.” Access to and review of Confidential Information shall be strictly controlled as set forth herein.

All Confidential Information provided to Staff pursuant to this Order shall be so marked by Mohave with a designation indicating its alleged trade secret proprietary, confidential or legally protected nature. Mohave shall memorialize any Confidential Information disclosed verbally by Mohave in writing within five (5) business days of its verbal disclosure, and the writing shall be marked by Mohave with the appropriate designation. Any Confidential Information disclosed verbally by Mohave shall be safeguarded by Staff and its contracting consultants only during the five (5) business day period during which memorialization may be provided. Mohave agrees that it will carefully consider the basis upon which any information is claimed to be trade secret, proprietary, confidential, or otherwise legally protected. Mohave shall designate as Confidential Information, only such information as it has a good faith basis for claiming to be legally protected. Where a part of a document, or only a part of an informational submittal may reasonably be considered to be trade secret, proprietary, confidential, or otherwise legally protected, Mohave shall only designate that part of such information submittal as Confidential Information under this Order. Information that is publicly available from any other source shall not be claimed as Confidential Information under this Order.

§3. Performance Under This Order Does Not Result In Waiver Or Disclosure.

Disclosure of information and performance of obligations hereunder shall not result in waiver of any claim, issue or dispute by any party concerning the trade secret, proprietary, confidential or legally protected nature of the Confidential Information provided. Neither shall the limited provision of Confidential Information by Mohave pursuant to this Order, nor the limited provision by Staff of Confidential Information pursuant to Section 6 of this Order constitute public disclosure of it.

§4. **Access To Confidential Information.** Prior to reviewing any Confidential Information, any Commission Staff Member or independent contracting consultant shall first be required to read a copy of this Protective Order, and to certify by his/her signature on Exhibit A of this Order, that he/she has reviewed the same and has consented to be bound by its terms. Exhibit A of this Order shall contain the signatory's full name, business address and employer, and the signatory's position with, or relationship to, the Arizona Corporation Commission ("Commission"). Upon execution, any and all Exhibits shall be promptly provided to counsel for Mohave.

§5. **Use Of Confidential Information.** All persons who are signatories to Exhibit A of this Order shall neither use nor disclose the Confidential Information for purposes other than those necessary for the disposition of this docket, including preparation for and the conduct of any administrative or legal proceeding. All persons entitled to review or afforded access to Confidential Information shall keep it secure as trade secret, confidential, or legally protected information in accordance with the purposes and intent of this Order.

§6. **Persons Entitled To Review.** The information provided pursuant to this Protective Order may be disclosed to other members of the Staff and to the Commission by any Commission signatory to Exhibit A to this Order only to the extent that disclosure is necessary to the disposition of this docket. Such disclosure may be made only if the person is provided with a copy of this Order and agrees to be bound by its terms as evidenced by execution of Exhibit A hereto.

§7. **Disclosure Of Information To The Public.** The Confidential Information provided pursuant to this Order shall not be disclosed, nor shall it be made a part of the public record in this docket, or in any other administrative or legal proceeding unless: Staff provides Mohave five (5) business days written notice that information designated by Mohave as Confidential Information shall be subject to disclosure as a public record. Upon the expiration of

five (5) business days from the date written notice is received by Mohave, any Confidential Information identified in the notice as subject to disclosure shall become part of the public record in this docket, unless Mohave initiates a protective proceeding under the terms of this Order.

§8. Protective Proceedings To Prevent Disclosure To The Public. In the event that Mohave seeks to prevent public disclosure of Confidential Information pursuant to Paragraph 7 above, Mohave shall file within five (5) business days of receipt of Staff's written notice, a motion presenting the specific grounds upon which it claims that the Confidential Information should not be disclosed or should not be made a part of the public record. Staff shall have an opportunity to respond to the motion. Mohave's motion may be ruled upon by either the Commission or an assigned Commission Administrative Law Judge ("ALJ"). Mohave may provide to the Commission or the ALJ the Confidential Information referenced in the motion without waiver that the information should remain confidential under the terms of this Order. Any Confidential Information so provided shall be kept under seal for the purpose of permitting inspection by the Commission or the ALJ prior to the ruling on the motion.

Notwithstanding any determination by the ALJ or the Commission that any Confidential Information provided pursuant to this Order should be made a part of the public record or otherwise disclosed, public disclosure shall not occur for a period of five (5) calendar days so that Mohave may seek judicial relief from the ALJ or the Commission's decision. Upon expiration of the five (5) day period, the Commission shall release the information to the public unless Mohave has received a stay or determination from a court of competent jurisdiction that the records, data, information or study are proprietary and are not public records subject to disclosure under A.R.S. § 39-101 *et seq.*

§9. Judicial Proceedings Related To Non-Party's Request For Disclosure. Where the Commission, ALJ or Staff determines that disclosure is not appropriate, in any judicial action against the Commission and/or Commissioners by the party seeking disclosure of the

information, unless specifically named, Mohave, as the real party in interest, shall join in the action as a co-defendant. Mohave also agrees to indemnify and hold the Commission harmless from any assessment of expenses, attorneys' fees or damages under A.R.S. § 39-121.02 or any other law, resulting from denial of access by the Commission to the information, data, records or study subsequently found to be non-confidential.

In the event that the Commission becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information, the Commission shall provide Mohave with prompt written notice of such requirement so that Mohave may seek an appropriate remedy and/or waive compliance. Mohave agrees that upon receipt of such notice, Mohave will either undertake to oppose disclosure of the Confidential Information or consent to its disclosure. If disclosure is ordered over Mohave's opposition, the Commission agrees to furnish only that portion of the Confidential Information that is legally required.

§10. No Preclusion Of Evidentiary Objections. In the event that disclosure of Confidential Information occurs, the provision of such information by Mohave pursuant to this Order shall not limit the right of Mohave to object to its relevance or admissibility in proceedings before the Commission.

§11. Return Of Confidential Information. Upon the final disposition of any administrative or legal proceeding arising in or from this docket, within ninety (90) days, Mohave shall submit a written request for the return of all Confidential Information, copies thereof, and notes made by signatories to this Order. If such a request is not received within the stated ninety (90) days, Staff shall destroy all Confidential Information, copies thereof, and notes made by the signatories to this Order, or return to Mohave all Confidential Information, copies thereof, and notes made by signatories to this Order, following written notice to Mohave of Staff's intent to return.

§12. **No Admission Of Privileged Or Confidential Status.** By participating in this Order, Staff and its contracting consultants are neither admitting nor agreeing with Mohave that any of the materials or communications designated as Confidential Information are, either in fact or as a matter of law, a trade secret or of a proprietary, confidential or legally protected nature.

§13. **Breach Of Order.** Mohave, in any legal action or complaint it files in any court alleging breach of this Order shall, at the written request of the Commission, name the Arizona Corporation Commission as a Defendant therein.

§14. **Non-Termination.** The provisions of this Order shall not terminate at the conclusion of this proceeding.

DATED this _____ day of _____, 2005.

ARIZONA CORPORATION COMMISSION

CURTIS, GOODWIN, SULLIVAN,
UDALL & SCHWAB, P.L.C.

By _____
_____, Esq., Legal Division
Arizona Corporation Commission
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By _____
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2712 North Seventh Street
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EXHIBIT "A"

I have read the foregoing Agreement Governing Confidential Information dated _____, 2005 entered into pursuant to the Protective Order dated _____, 2005 entered in Mohave Electric Cooperative, Inc. v. UniSource Energy Corporation and UNS Electric, Inc., Docket Nos.: E-01750A-04-0798, E-04204A-04-0798, and E-04230A-04-0798; and UNS Electric, Inc.'s Application, Docket Nos.: E-01750A-04-0824 and E-0404A-04-0824 and agree to be bound by the terms and conditions of such Order.

Name

Signature

Employer or Firm

Business Address

Position or relationship with the
Arizona Corporation Commission

Date